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18CV00534



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White Sands Beach Club, Inc.
vs.
Provincetown Zoning
Board of Appeals et al.

SUMMONS AND ORDER OF NOTICE	DOCKET NUMBER 1872CV00534	Trial Court of Massachusetts The Superior Court
CASE NAME White Sands Beach Club, Inc. vs. Provincetown Zoning Board of Appeals et al	To Provincetown Zoning Board of Appeals	Scott W. Nickerson, Clerk of Court Barnstable County
		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630

To the above named defendant(s):

You are hereby summoned and required to serve upon:

Edward T Patten, Esq.
Law Office of Edward T. Patten
1198 Route 28 Unit D
PO Box 1116
South Yarmouth, MA 02664

an answer to the complaint which is herewith served upon you. This must be done within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at Barnstable either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that application for a Temporary Restraining Order has been made in said action, as it appears in the complaint. A hearing on this matter has been scheduled for:

Date: 10/11/2018
Time: 02:00 PM
Event: Hearing on Preliminary Injunction
Session Location: Second Session / Courtroom 2

at which time you may appear and show cause why such application should not be granted.

DATE ISSUED	CHIEF JUSTICE OF THE SUPERIOR COURT Witness: Hon. Judith Fabricant	ASSOCIATE JUSTICE Hon. Mark Gildea	ASSISTANT CLERK X
10/04/2018			

I hereby certify and return that on _____, I served a copy of this summons, together with a copy of the Complaint.

PARTY NAME:

X

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF
THE TRIAL COURT

BARNSTABLE, SS.



C.A. NO. CV 18CV534

WHITE SANDS BEACH CLUB, INC.,
PLAINTIFF

V.

DANIEL WAGNER, JEREMY CALLAHAN, MARIANNE CLEMENTS, ROB ANDERSON, STEVEN LATASA-NICKS, and PETER H. OKUN as they are the Members of the Town of Provincetown Zoning Board of Appeals.
and

LYNN A. SAUCIER, TRUSTEE, THE BEACH BUCKET TRUST
DEFENDANTS

Plaintiff's Application for Preliminary Injunction

Now comes the plaintiff and hereby files this application pursuant to Rule 65 of the Massachusetts Rules of Civil Procedure, requesting that this Court enter a preliminary injunction against defendant Lynn A. Saucier, Trustee, The Beach Bucket Trust, her contractors, agents, servants and employees , in order to avoid immediate and irreparable injury, loss and/or damage to plaintiff. The grounds for this Application are fully set forth in the Verified Complaint filed simultaneously herewith.

Wherefore, the plaintiff requests that the Court:

Order that the defendants, her contractors, agents, attorneys and representatives and all persons acting in concert with them are hereby restrained, enjoined and prohibited from performing any further building work or activity on the structure known as Unit 15, 963 Commercial Street, Provincetown, Ma. owned by the defendant Saucier, Trustee as aforesaid above.

Respectfully submitted,
Plaintiff, by its attorney,

Dated: October 4 , 2018

Edward T. Patten

Edward T. Patten, Esq.
BBO # 546386
1198 Route 28-Unit D
PO Box 1116
So. Yarmouth, Ma. 02664
Tel. (508)619-3809
Fax: 508-694-6738

10/4/18- Short Order of Notice to
issue returnable at 2:00PM, 10/11/18.
By the Court, Gildea, J.
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF
THE TRIAL COURT

BARNSTABLE, SS.

SUPERIOR COURT
BARNSTABLE, SS

FILED *Ant Wagn* OCT 04 2018

Lynne M. Saucier Clerk
C.A. NO. CV 18CV534

WHITE SANDS BEACH CLUB, INC.,
PLAINTIFF

V.

**DANIEL WAGNER, JEREMY CALLAHAN, MARIANNE CLEMENTS, ROB
ANDERSON, STEVEN LATASA-NICKS, and PETER H. OKUN as they are the Members
of the Town of Provincetown Zoning Board of Appeals.**
and

**LYNN A. SAUCIER, TRUSTEE, THE BEACH BUCKET TRUST
DEFENDANTS**

Plaintiff's Application for Ex Parte Temporary Restraining Order

Now comes the plaintiff and hereby files this application pursuant to Rule 65 of the Massachusetts Rules of Civil Procedure, requesting that this Court enter an ex parte temporary restraining order against defendant Lynn A. Saucier, Trustee, The Beach Bucket Trust, her contractors, agents, servants and employees , in order to avoid immediate and irreparable injury, loss and/or damage to plaintiff before defendant or counsel can be heard in opposition. The grounds for this Application are fully set forth in the Verified Complaint filed simultaneously herewith.

Wherefore, the plaintiff requests that the Court:

Order that the defendants, her contractors, agents, attorneys and representatives and all persons acting in concert with them are hereby restrained and prohibited from performing any further building work or activity on the structure known as Unit 15, 963 Commercial Street, Provincetown, Ma. owned by the defendant Saucier, Trustee as aforesaid above.

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2

Respectfully submitted,
Plaintiff, by its attorney,

Dated: October 4, 2018

Edward T. Patten

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BBO # 546386
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Fax: 508-694-6738

CIVIL ACTION COVER SHEET		SUPERIOR COURT OF MASSACHUSETTS	
Trial Court of Massachusetts		WHALE SAVDS BEHLY CLLS INC	706 SHORE RD.
		DEFENDANT(S): PROVIDE YOUR STREET ADDRESS	EDWARD T. PATTEN, ESG.
		ADDRESS: 260 COMMERCE LILY ST.	1198 RT. 28 - UNIT D BOX 1116
		DEFENDANT(S): PROVIDE YOUR STREET ADDRESS	SD. HAROLD M. MA. 08664
		ADDRESS: 260 COMMERCE LILY ST.	SAUERI 27 BLACKBURN RD. HYDE PARK
		TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)	MA. 07136
		TYPE OF ACTION (Specify) HAS A JURY CLAIM BEEN MADE? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	2011-APPEAL, LLC, MA
		CODE NO. 546386	please describe:
STATEMENT OF DAMAGES PURSUANT TO G.L.C. 212, § 3A			
<p>Following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For m, disregard double or triple damage claims; indicate single damages only.</p> <p>(attach additional sheets as necessary)</p> <p>TORT CLAIMS</p> <p>mented medical expenses to date:</p> <p>1. Total hospital expenses</p> <p>2. Total doctor expenses</p> <p>3. Total chiropractic expenses</p> <p>4. Total physical therapy expenses</p> <p>5. Total other expenses (describe below)</p> <p>mented lost wages to date:</p> <p>1. Itemized medical expenses to date</p> <p>2. Non-medical property damages to date</p> <p>3. Non-medical medical expenses</p> <p>4. Non-medical lost wages</p> <p>5. Non-medical lost wages (describe below)</p> <p>documented items of damages (describe below)</p> <p>describe plaintiff's injury, including the nature and extent of injury:</p> <p>CONTRACT CLAIMS</p> <p>(attach additional sheets as necessary)</p> <p>TOTAL (A-F): \$</p> <p>N/A</p>			
<p>WEAL OF 2011-APPEAL PERMIT ISSUED BY</p> <p>APPEAL OF APPEALS TO ALICE MS. SAUERI TOTAL: \$ N/A</p> <p>ED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.</p> <p>Date: 10/4/14</p> <p>URE OF ATTORNEY/PRO SE PLAINTIFF: X</p> <p>USE OF THE REAGAN COURT FEE TEST RESULTS.</p> <p>DATE OF SPECIAL PERMIT ISSUED BY</p> <p>ED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.</p> <p>Date: 10/4/14</p> <p>certify that I have compiled with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (S</p> <p>18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them ages and disadvantages of the various methods of dispute resolution.</p> <p>Date: 10/4/14</p> <p>ure of Attorney of Record: X</p> <p>1772 AL 00501</p>			

**COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF
THE TRIAL COURT**

BARNSTABLE, SS.

SUPERIOR COURT
BARNSTABLE, SS

FILED OCT 04 2018

[Signature] Clerk

C.A. NO. CV 18CV584

**WHITE SANDS BEACH CLUB, INC.,
PLAINTIFF**

V.

**DANIEL WAGNER, JEREMY CALLAHAN, MARIANNE CLEMENTS, ROB
ANDERSON, STEVEN LATASA-NICKS, and PETER H. OKUN as they are the Members
of the Town of Provincetown Zoning Board of Appeals.
and**

**LYNN A. SAUCIER, TRUSTEE, THE BEACH BUCKET TRUST
DEFENDANTS**

**VERIFIED COMPLAINT
(G.L. c. 40A, sec. 17)**

INTRODUCTION

The Plaintiff, White Sands Beach Club, Inc., appeals to this Court in order to annul a Special Permit purportedly granted by the Town of Provincetown Zoning Board of Appeals on August 2, 2018, pursuant to the Zoning Bylaw Article 3, Section 3110 to the Applicant, identified in said Decision as Lynn A. Saucier, Trustee, to increase the height and lot coverage of a structure within a pre-existing, non-conforming setback known as Unit 15, Beach Point Club, 693 (sic) Commercial Street, Provincetown, Ma.

FACTUAL ALLEGATIONS

1. The Barnstable County Superior Court has jurisdiction of this appeal pursuant to G.L. c. 40A, sec. 17.
2. Plaintiff White Sands Beach Club, Inc. ("White Sands"), by Deed dated June 21, 1990, recorded with the Barnstable County Registry of Deeds at Book 7204 , Page

013, is the owner of record of the land and buildings known and numbered as 706 Shore Road , Truro, Ma. and which are located immediately adjacent to and directly abutting the land and buildings located at 963 Commercial Street, Provincetown, Ma. which form the subject matter of this appeal.

3. The defendant Lynn A. Saucier, Trustee of the Beach Bucket Trust ("Saucier"), on information and belief, is the record owner of Unit 15 of the Beach Point Club and is the petitioner in this matter before the Provincetown Zoning Board of Appeals . Her mailing address as appears in the records of the Provincetown Zoning Board of Appeals is 27 Braeburn Road, Hyde Park, Ma. 02136.
4. Defendants Daniel Wagner, Jeremy Callahan, Marianne Clements, Rob Anderson and Steven Latasa-Nicks and Peter H. Okun are the current Members of the Provincetown Zoning Board of Appeals (the "Board"). Their address in this capacity is Town Hall, 260 Commercial Street, Provincetown, Ma. 02657.
5. On August 2, 2018, the Board granted a Special Permit to Saucier pursuant to Zoning Bylaw Article 3, Section 3110 to vertically expand property located at "693 Commercial Street unit 15 Provincetown, Ma. 02657" to add a second level purportedly "to add a storage loft with dormers and to increase the first floor by 3 feet to the south and increase the roof by 5'-4 3/4" on a structure with less than 9 feet separation from abutting structure.". A true attested copy of the Board's decision is attached hereto as Exhibit A. As is evident from the face of the Board's Decision, the Special Permit was not granted for the property located at 963 Commercial Street but, rather, for property located at 693 Commercial Street, Provincetown.

6. The Board's Decision without making any specific findings asserts that the proposed changes "...would not be substantially detrimental to the Town or the neighborhood...."
7. The written Decision of the Board contains no findings for the basis of its conclusion that the proposed work will not be more substantially detrimental to the Town or the neighborhood than the existing configuration.
8. The Plaintiff is a person aggrieved by the Decision of the Board under G.L. C. 40A, sec. 17 as the owner of 706 Shore Road. Truro, Ma. and being a direct abutter to 963 Commercial Street, Provincetown, Ma. It is a person entitled to notice pursuant to G.L. c. 40A, sec. 11. As such, the plaintiff is a party in interest to the zoning proceeding and was entitled to notice of the time and date of the public hearing on Ms. Saucier's application.
9. The plaintiff did not receive any notice by mail or otherwise of the August 2, 2018 public hearing in the matter even though its principal (Maria Kuliopoulos) was present on the White Sands property daily during the summer months as the operator and Manager of the White Sands motel located thereon. Kuliopoulos did receive mail at the White Sands Post Office Box in Provincetown which she checked daily during the summer months. Kuliopoulos only became aware of any evidence of expansion of Unit 15 at 963 Commercial Street on Friday, September 28, 2018 when she returned to Truro after a brief absence of several days.
10. The lack of mailed notice to the plaintiff is the second such occurrence which it has suffered in the preceding year. The plaintiff had not been given notice of a nearly identical project for Unit 28 at the Beach Point site at 963 Commercial Street,

Provincetown in September, 2017. She only accidentally learned of the unit 28 project and forced a continuance of that public hearing. The facts speak for themselves as to whether the plaintiff is treated dissimilarly from other parties in interest when 963 Commercial Street projects are before the Board.

11. After observing the construction activity on September 28, Kuliopulis went to Provincetown Town Hall and reviewed the file for the locus. Her review showed that there was an Abutters' List in the file which did not bear the name of the plaintiff. There was no evidence therein that the Board had caused notice to be mailed to the plaintiff. Kuliopulis then contacted the office of the Truro Assessor who provided a written statement that the Truro Assessors had not received a request from the Provincetown Assessor for an Abutters List relative to the public hearing on the matter. Counsel for Kuliopulis immediately requested that the Provincetown Building Commissioner revoke any Building Permit issued for the site.

12. On Monday, October 1, 2018, Kuliopulis observed that additional work had been done on the structure whereupon counsel telephoned the Building Commissioner who denied his revocation request stating, *inter alia*, that the Special Permit had been approved and that notice had been forwarded to the plaintiff as required. The Building Commissioner then agreed to forward to counsel the purported Board Decision in the matter along with the Application submitted as well as the Abutters List which she claimed evidenced notice to the plaintiff. In short, there apparently was no Abutters List in the file on Friday but one appeared at the opening of business on Monday.

13. Counsel did receive the application and the Decision attached to this Complaint (referencing 693 Commercial Street, Provincetown and not 963 Commercial) directly

from the Building Commissioner but did not receive the Abutters List information from the Building Commissioner. Instead he received an electronic mailing from the Assistant Town Manager between the time he spoke with the Building Commissioner and the arrival of papers which the Commissioner forwarded. The Assistant Town Manager represented that the papers he forwarded showed that the plaintiff did appear on an Abutters List provided by the Town of Truro. This began a protracted and confused electronic mail dialogue involving several electronic mailings between counsel and the Assistant Town Manager which included several earlier electronic mailings between Provincetown and Truro officials regarding how to produce an Abutters List of Truro property owners who are parties in interest to 963 Commercial Street in Provincetown.

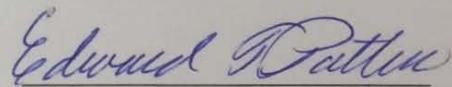
14. The net result of these Provincetown/Truro communications, according to the Assistant Town Manager, was the production of a list of property owners abutting 695 Shore Road in Truro and not 963 Commercial Street, Provincetown. A true photostatic copy of the final papers forwarded by the Assistant Town Manager on October 2, 2018 are attached hereto as Exhibit B.
15. The active communications from the Assistant Town Manager providing somewhat altering explanations regarding the Abutters List issue certainly raised the impression that an effort to manufacture a defensible position was afoot.
16. Immediately after counsel requested that the Assistant Town Manager provide him with copies of documentation that the Board had in fact provided notice to the plaintiff. As of the time and date of this Complaint, no such documentation has been received.

17. Accordingly, not having received notice as required pursuant to G.L. c. 40A, sec. 11, the plaintiff is entitled to maintain this action pursuant to G.L. c. 40A, sec. 17 within 90 days of August 3, 2018.
18. Because of the location of the structure within inches of the common boundary between 706 Shore Road and 963 Commercial Street abutting Unit 15, the proposed expansion of Unit 15 will result in overcrowding of the land area in derogation of the purposes of the Residence 1 Zoning District to provide for less dense residential development in the town's outlying areas especially where the intensification of density, as here, will reduce the value of abutting properties.
19. In short, construction of the additional story and living space on the second story of the structure known as Unit 15 will be substantially more detrimental to the neighborhood and Plaintiff's abutting property.
20. The Decision of the Board exceeds the authority of the Board as it is arbitrary and capricious and is based on a legally untenable ground.

WHEREFORE, the Plaintiff prays that this Honorable Court annul the Decision of the Town of Provincetown Zoning Board of Appeals and grant such further relief as is just and proper.

Plaintiff,
By its attorney,

Dated: October 4, 2018

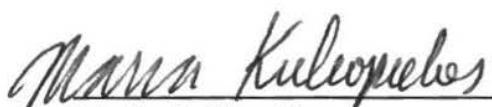


Edward T. Patten, Esq.
BBO#546386
Law Office of Edward Patten
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PO Box 1116
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Tel: 508-619-3809

VERIFICATION

I, Maria Kuliopulis, on oath depose and state that I have read the foregoing allegations set forth in the Verified Complaint and know them to be true upon my own personal knowledge and information. I further state that it is evident from the foregoing facts as stated in the Verified Complaint that the plaintiffs will suffer immediate and irreparable injury, loss or damage before the defendants can be heard in opposition to the plaintiff's Application for Temporary Restraining Order and Application for Preliminary Injunction to be filed simultaneously herewith.

Subscribed and sworn to under the penalties of perjury this 4th day of October, 2018.


Maria Kuliopulis

Town of Provincetown
Office of the Town Clerk



Town Hall, 260 Commercial Street
Provincetown, Massachusetts 02657
Facsimile (508) 487-9560
Telephone (508) 487-7013

I, Ana Ruiz, Acting Assistant Town Clerk of the Town of Provincetown, hereby certify that this decision of the Zoning Board of Appeals of the Town of Provincetown was filed in this office on August 13, 2018 and no notice of appeal was received during the 20 days next after such receipt and filing of the decision.

Decision # Fy 18 - 70

Applicant's Name: William Rogers o/b/o Lynn A. Saucier

Date: October 3, 2018


Ana Ruiz
Provincetown Assistant Town Clerk



**Town of Provincetown
Zoning Board of Appeals
Town Hall
Provincetown, MA 02657**

FY 18-70
Hearing Date: July 19, 2018

963 Commercial Street

Findings and Decision of the Zoning Board of Appeals

Introduction:

Applicant: William Rogers P.O. 631 Provincetown, Ma
Property Owner: Lynn A. Saucier, Trustee 27 Braeburn Rd. Hyde Park, Ma 02136

Property Location & Description: 693 Commercial Street, unit 15 Provincetown, MA 02657
Assessors Map & Parcel 19-2 / 1
Res 1 Zoning District.

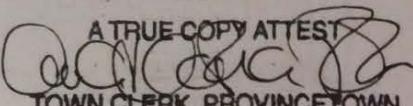
The applicant seeks a Special Permit pursuant to Article 3, Section 3110 Change , Extensions and Alterations, of the Zoning By-Law to add a storage loft with dormers, increase the first floor by 3 feet towards the south and increase the roof by 5'-4 ¾ " on a structure with less than 9 feet separation from abutting structure.

Vice Chair Rob Anderson explained that since there were only 4 members seated, an a unanimous vote would be needed for granting of a special permit, the applicant had the choice of postponing the matter until 5 members were available. The applicant chose to proceed.
Rob Anderson, Daniel Wagner, Steven Latasa-Nicks, and Peter Okun sat on the case.

Presentation: Gary Locke and Lynn Saucier appeared to present the application. Mr. Locke requested the application be heard under the Goldhirsh v Mc Near ruling. He reviewed the project which includes adding a storage loft and 3 foot to an existing 18' x 15' cottage that is located just 4 feet from the of a cottage on its north elevation. The ridge height will be raised by 5' 4 ¾" and the 3 foot extension is southward towards the bay. The will be compliant with all other Zoning By-Laws and is in terms of architectural style and size consistent with other structures in the neighborhood.

Applicable Law and Decision Criteria:

THE LOCAL ZONING BY-LAWS INDICATED BELOW ARE THE MOST RECENT LAWS IN EFFECT,
DECEMBER 10, 2015, AS CERTIFIED BY THE SECRETARY OF STATE OF THE COMMONWEALTH OF
MASSACHUSETTS.

A TRUE COPY ATTEST

TOWN CLERK, PROVINCETOWN

1. Massachusetts General Laws Chapter 40A, Section 9 as it pertains to special permits.
2. Article 5, Section 5330 of the Zoning By-Laws.
3. Article 3 Section 3110 of the Provincetown

Findings

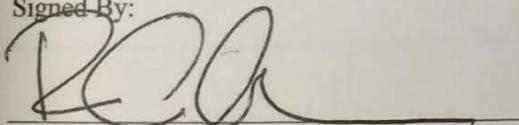
1. The Board declined to hear the case under the Goldhirsch decision and questioned Mr. Locke.
2. There were no letters in the file

Decision:

Steven Latasa-Nicks moved to find that pursuant to Article 5, Section 5330, the economic, social and other benefits of the project to the town and neighborhood out weigh any adverse effects such as hazard, congestion and environmental degradation, Rob Anderson seconded and it was so voted, 4-0

Steven Latasa-Nicks moved to grant a special permit pursuant to Article 3, Section 3110, Change, Extension and Alterations, of the Zoning By-Laws to add a storage loft with dormers, increase the first floor by 3 feet towards the south and increase the roof height by 5 feet 4 and three quarters inches on a structure with less than 9 feet of separation from an abutting structure at the property located 963 Commercial Street, #15 (res 1), Rob Anderson seconded and it was so voted 4-0

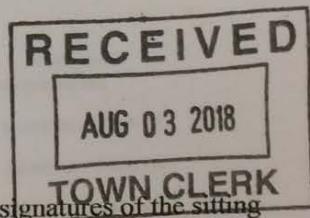
Signed By:



Rob Anderson
Vice Chairman

Date

8/2/18



Date of Filing:

A copy of this application, bearing the stamp of this Board, the signatures of the sitting Members and the date of the decision, will be on file in the Provincetown Department of Community Development. The applicant is hereby put on notice that any deviation from the above-referenced application shall invalidate this Special Permit and shall require further review by this Board. Furthermore, the Special Permit issued hereunder shall not be valid until recorded at the Registry of Deeds in Barnstable as provided in MGL c. 40A.

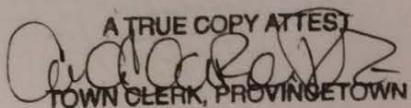
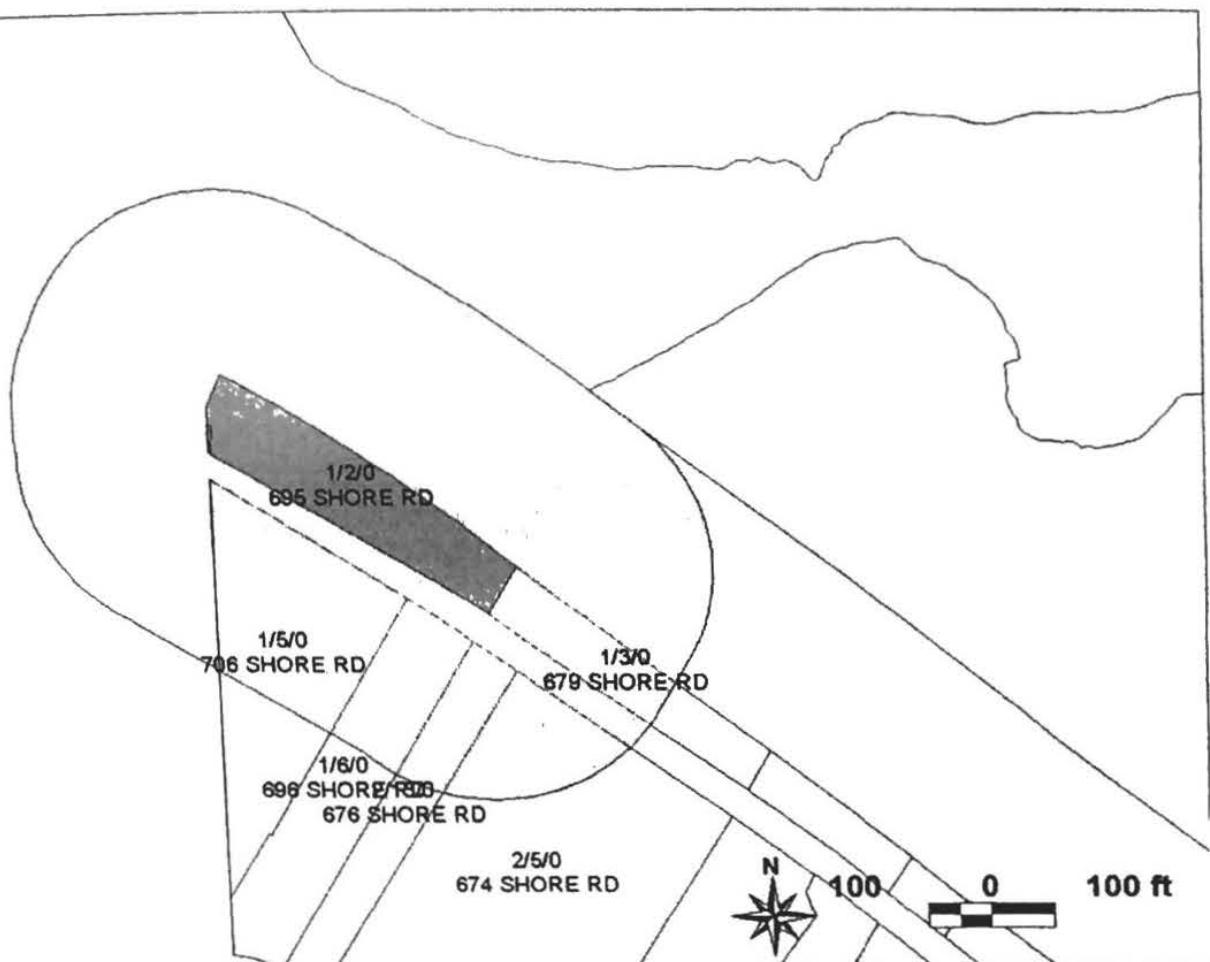
A TRUE COPY ATTEST

TOWN CLERK, PROVINCETOWN

EXHIBIT B

TOWN OF TRURO, MA
BOARD OF ASSESSORS
P.O. BOX 2012, TRURO MA 02666
Abutters List Within 300 feet of Parcel 1/2/0



Parcel ID	Owner	Location	Mailing Street	Mailing City	ST
1-1-0-R	OWNER UNKNOWN		701 SHORE RD N/A		TRURO
1-2-0-R	SVERID SCOTT R & DEBRA R		695 SHORE RD PO BOX 537		PROVINCE
1-3-0-R	KALMAR VILLAGE INC		679 SHORE RD PO BOX 745		NO TRURC
1-5-0-R	WHITE SANDS BEACH CLUB INC		706 SHORE RD PO BOX 611		PROVINCE
1-6-0-R	SVERID SCOTT R & DEBRA R		696 SHORE RD PO BOX 537		PROVINCE
2-5-0-R	KALMAR VILLAGE CO-OP HSG CORP		674 SHORE RD C/O PRELACK DANIEL PO BOX 745		NO TRURC
2-13-0-R	TRADE WINDS CO-OP HOUSING CORP		676 SHORE RD C/O PRELACK DANIEL PO BOX 745		NO TRURC